

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000221-001 DT

09/19/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

F TYLER RICH

v.

ADRIAN M MCNEIL (001)

MICHAEL J DEW

PHX CITY MUNICIPAL COURT  
REMAND DESK-LCA-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #20029100257

Charge: 1) 23-52A

DOB: 07/20/64

DOC: 11/20/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on August 22, 2003. This Court has considered and reviewed the file from the Phoenix City Court, and the Memoranda submitted by counsel.

The issue presented in this case is the failure of the trial judge to inform Appellant of the constitutional rights she gave up by admitting prior prostitution convictions. Both parties are in agreement that the trial court erred by failing to determine whether Appellant's admission was knowingly, voluntarily, and intelligently made pursuant to Rule 17.6, Arizona Rules of Criminal Procedure.

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Both parties agree that an admission to the court of prior convictions must be made pursuant to Rule 17.6, Arizona Rules of Criminal Procedure. That rule requires that before accepting the admission, the trial court must address the criminal defendant, and determine that she understands the following:

- (1) The nature of the charge or admissions;
- (2) The nature and range of the enhanced sentence, including special conditions regarding sentence;
- (3) The constitutional rights which the defendant foregoes by making the admission;
- (4) The right to plead not guilty to the prior convictions; and
- (5) An admission will waive a direct appeal.<sup>1</sup>

Additionally, Rule 17.3, Arizona Rules of Criminal Procedure requires that the trial court determine whether the admission was voluntarily made, that a factual basis exists for the admission, and that the plea has been intelligently made.

This Court determines that the appropriate remedy is to remand this matter back to the trial judge for a hearing to determine whether the Appellant was aware prior to or at the time of the admission to the court of the possible range of sentence and all of those rights enumerated in Rule 17.2, Arizona Rules of Criminal Procedure. If the trial judge is able to find that Appellant was aware of all of these rights, that her admission was knowingly, intelligently made with a factual basis, then the trial judge should make those findings on the record, subject to appellate review by this court.

On the other hand, if the trial judge concludes that Appellant did not knowingly, intelligently, and voluntarily waive the constitutional rights referred to previously, or that no factual basis exists for the admission, then the trial judge shall make specific findings to that effect, and vacate the judgment of guilt (only as to the prior convictions) and the sentence imposed, and set a new trial pursuant to Rule 24.1, Arizona Rules of Criminal Procedure on the State's allegation of prior convictions.

IT IS ORDERED remanding this matter back to the Phoenix City Court, with instructions to hold a hearing as described within this opinion, to make findings, and to proceed to enter judgment to grant or deny Appellant a new trial on the allegation of prior convictions.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT

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<sup>1</sup> See Rule 17.2, Arizona Rules of Criminal Procedure